

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

KAREN S. COLE,

Plaintiff,

v.

**AMERICAN FAMILY MUTUAL
INSURANCE COMPANY, et al.,**

Defendants.

CIVIL ACTION

No. 04-2073-CM

MEMORANDUM AND ORDER

Plaintiff originally filed this lawsuit in the Western District of Missouri on October 14, 2003. When filing her lawsuit, plaintiff did not seek a jury trial. After the Western District of Missouri transferred this case to the District of Kansas, this court issued a Scheduling Order that allowed plaintiff until September 15, 2004, to amend her pleadings, which she did not.

After the September 15, 2004 deadline, and after discovery closed, plaintiff moved for a jury trial. On April 19, 2005, Magistrate Judge Waxse granted plaintiff's motion for trial by jury (Doc. 93). This matter is before the court on defendants' Objections to Magistrate's Order and Request for Reconsideration by District Court Judge (Doc. 97).

Magistrates may issue orders as to non-dispositive pretrial matters, and district courts review such orders under a "clearly erroneous or contrary to law" standard of review. 28 U.S.C. § 636(b)(1)(A). Defendants assert that Magistrate Judge Waxse erred in granting plaintiffs' untimely motion for a jury trial and further contend that they will be prejudiced by such a decision

at this juncture in the litigation. Upon consideration of defendants' arguments, the court concludes that Magistrate Judge Waxse's decision to grant plaintiff a jury trial was not clearly erroneous or contrary to law.

As pointed out by Magistrate Judge Waxse, under Rule 39(b), the court has discretion to order a jury trial on any or all issues, notwithstanding a party's failure to make a timely demand for a jury trial and that the discretion granted under Rule 39(b) is very broad. As such, in the absence of strong and compelling reasons to the contrary, a district court should exercise its discretion under Rule 39(b) to grant a jury trial.

The court is mindful that defendants have been preparing their case as if it were to be tried to a court. However, this is not a sufficiently strong or compelling reason to warrant overruling Magistrate Judge Waxse's order, especially "[g]iven the presumption in this Circuit in favor of a jury trial." *Green Constr. Co. v. Kan. Power & Light Co.*, 1990 WL 120928, at *2 (D. Kan. Jul. 19, 1990).

IT IS THEREFORE ORDERED that defendants' Objections to Magistrate's Order and Request for Reconsideration by District Court Judge (Doc. 97) is denied.

Dated this 9th day of June 2005, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge

